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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1907

No. 101

JOHN MURRAY GARNER, ET AL, PETITIONERS,

LOUISIANA.

ON PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF LOUISIANA.

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UNITED STATES AT WASHINGTON, D. C.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

**No. 617**

JOHN BURRELL GARNER, ET AL., PETITIONERS,

*vs.*

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF LOUISIANA

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[fol. 1]

**IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

**INFORMATION—Filed April 27, 1960**

Ralph L. Roy Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

1. John Burrell Garner
2. Vernon Johnnie Jordon

late of the Parish of East Baton Rouge, on the Twenty-ninth (29th) day of March in the year of our Lord One Thousand Nine Hundred and Sixty with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did unlawfully violated Article 103 (Section 7) of the Louisiana Criminal Code in that they refused to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Sitman's Drug Store; said conduct being in such a manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana.



[fol. 2]

[File endorsement omitted]

No. 35568

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

---

STATE OF LOUISIANA

VS.

1. JOHN BURRELL GARNER (CM) 8955 Scenic Hwy
  2. VERNON JOHNNIE JORDON (CM) Box 3689, Scotlandville
- 

INFORMATION

DISTURBING THE PEACE

---

Filed April 27 A. D., 1960

Betty Brady, Deputy Clerk, Nineteenth Judicial District Court.

Assistant District Attorney

WITNESSES:

Off. T. W. Larsen, Capt. Weiner, Major Bauer, Lt. Martin, Off. E. Reipricht.

[fol. 3]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Case Number .....

STATE OF LOUISIANA,

VS.

JOHN B. GARNER, et al.

APPLICATION FOR BILL OF PARTICULARS—Filed April 25, 1960

Now into this Honorable Court come John Burrell Garner and Vernon Johnnie Jordan, defendants in the above entitled and numbered cause, and before arraignment, plead that they are unable to answer to the Bill of Information, and plead that they are unable to properly prepare their defenses herein, until they are furnished with a Bill of Particulars upon the following, to-wit:

—1—

At what time and place was the defendants conduct of such a manner as to unreasonably disturb the public?

—2—

State the time, place, names and addresses of the persons in whose presence the defendants' conduct was of such a manner as to unreasonably disturb the public.

—3—

What unlawful acts of conduct did the defendants commit in such a manner as to unreasonably disturb the public?

—4—

State the specific acts or offenses the defendants committed, giving the specific time, place and the names, addresses and official capacity of the persons in whose presence the acts or offenses were committed in such a [fol. 4] manner as to unreasonably disturb the public?

—5—

In what manner did the defendants conduct themselves in the presence of others so as to unreasonably disturb the public?

—6—

What acts, if any, and in what manner were said acts committed, so as to unreasonably disturb the public, and in whose presence were said acts committed?

—7—

State the name, address, and the official capacity of the agent of Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, who ordered the defendants to move from a cafe counter seat at or in the said Sitman's Drug Store, and by whose authority and/or under what authority the agent of the Sitman's Drug Store was acting when said agent ordered the defendants to move from a cafe counter seat at the said Sitman's Drug Store.

—8—

State the reasons or causes for the agent of the said Sitman's Drug Store to request or ask the defendants to move from a cafe counter seat at or in said drug store and by whose authority and/or under what authority was the said agent of said drug store acting when said agent requested and/or asked the defendants to move from a cafe counter seat at or in said drug store.

—9—

State whether or not the agent of the said Sitman's Drug Store requested the defendants to move from a cafe

counter seat merely because the defendants were and are members of the Negro race, and whether or not the agent of said drug store was acting under the segregation laws of the State of Louisiana and/or under the laws, ordinances, regulations, customs and/or usages of the State of Louisiana and/or the City of Baton Rouge, Louisiana when said agent requested the defendants to move from said cafe counter seats.

[fol. 5] Wherefore, your defendants, John Burrell Garner and Vernon Johnnie Jordan, pray that the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon your defendants; and that, the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendants pray for all such other relief to which they are or may be entitled.

John Burrell Garner, Defendant, Vernon Johnnie Jordan, Defendant.

Attorney for Defendant: Johnnie A. Jones.

[fol. 6] *Duly sworn to by John Burrell Garner and Vernon Johnnie Jordan, jurats omitted in printing.*

[File endorsement omitted]

[fol. 7]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

PROPOSED ORDER GRANTING BILL OF PARTICULARS

Let Honorable J. St. Clair Favrot, District Attorney of the Parish of East Baton Rouge, State of Louisiana,

be and he is hereby Ordered to furnish the defendants, John Burrell Garner and Vernon Johnnie Jordan, the Particulars requested in the foregoing application, within ..... days from the date hereof.

Baton Rouge, Louisiana, this ..... day of April, 1960.

....., Judge, 19th Judicial District Court of Louisiana.

[fol. 8]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION TO QUASH—Filed April 27, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come John Burrell Garner and Vernon Johnnie Jordan, the defendants in the above entitled and numbered cause, move to quash the Bill of Information for the following reasons, to-wit:

—1—

That the Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, in that it fails to allege any unlawful act or acts the defendants had committed or were committing when they were ordered to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana.

—2—

That the said Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, because it merely alleges that the defendants refused to move from a cafe counter seat at the said Sitman's

Drug Store after having been ordered to do so by the agent of Sitman's Drug Store, and fails to allege that the defendants committed any unlawful act or acts set forth and/or enumerated under LSA-R. S. 14:103 of 1950, as amended.

—3—

That the said Bill of Information does not allege any unlawful act or acts committed by the defendants which are set forth and enumerated in and/or under LSA-R. S. 14:103 of 1950, as amended.

[fol. 9]

—4—

That the said Bill of Information fails to show or allege the manner in which the defendants disturbed the peace; that the mere refusal of the defendants to move from a cafe counter seat when ordered to do so by an agent of the said Sitman's Drug Store is not embraced within the terms of said Statute, LSA-R. S. 14:103, and does not constitute a disturbance of the peace, as such.

—5—

That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that "the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Sitman's Drug Store constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—6—

That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process



in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—7—

That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated in Southern University and A & M College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, [fol. 10] charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1,500.00) Dollars bond, each.

Wherefore, your defendants, John Burrell Garner and Vernon Johnnie Jordan, each, pray that this Motion to Quash be maintained and that the said Bill of Information as to them, each, and as for as they, each, are concerned, be declared null and void, and that they, each, be discharged therefrom.

Movers further pray for all necessary orders, and for general and equitable relief in the premises.

Attorney for Defendants: Johnnie A. Jones.

John Burrell Garner, Defendant, Vernon Johnnie Jordan, Defendant.

[fol. 11] *Duly sworn to by John Burrell Garner and Vernon Johnnie Jordan, jurats omitted in printing.*

[File endorsement omitted]

[fol. 12]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Wednesday, April 27, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,568—Criminal Docket

Bill of information filed.

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

No. 35,566

---

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

---

No. 35,567

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

---

No. 35,568

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

These cases came before the court on applications for bills of particulars filed herein on behalf of the accused.

On motion of counsel for the accused, A. T. Tureaud was ordered enrolled as associate counsel of record for the accused. On the further motion of counsel for the accused, the Court ordered that these cases be consolidated for the purpose of this hearing.

On motion of the Assistant District Attorney, and by agreement of counsel for the accused, each of the bills of information herein was amended so as to add "(Section 7)" after "Article 103," and to insert the words "and foreseeably" between the word "unreasonably" and the word "disturb."

**MINUTE ENTRY DENYING APPLICATIONS FOR BILLS OF  
PARTICULARS, ETC.**

The applications for bills of particulars were argued and submitted, and the Court, for oral reasons assigned, rendered judgment denying the applications for bills of particulars in these cases, to which ruling of the Court counsel for the defendant objected and reserved a formal bill of exception, asking that the application filed in each of these cases for bills of particulars on behalf of these [fol. 13] defendants and the ruling of the Court be made a part of the record.

Counsel for the accused filed a motion to quash in each of these cases, which motions were assigned for argument Friday, April 29, 1960 at 2 o'clock P. M.

**MINUTES OF THE COURT—Friday, April 29, 1960**

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566

---

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

---

No. 35,567

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

---

No. 35,568

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

**MINUTE ENTRY DENYING MOTIONS TO QUASH, ETC.**

These cases came before the court on motions to quash filed herein on behalf of the defendants. By agreement of counsel for the accused and the Assistant District Attorney, these cases were consolidated for the purpose of this hearing. The motions to quash were argued and submitted, and the Court, for oral reasons assigned, ren-

dered judgment herein denying the motions to quash, to which ruling of the Court counsel for the accused objected and reserved a formal bill of exception, and asked that the Court's ruling be made a part of the record; that the bill of informations be made a part of the record, and that defendants' motions to quash be made a part of the record.

Counsel for the accused gave written notice to the court of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel a period of ten days from this day in which to apply for writs.

No. 35,568—Criminal Docket

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

#### MINUTE ENTRY OF ARRAIGNMENT AND PLEA OF NOT GUILTY

The accused, charged with disturbing the peace, were present in court represented by counsel, and through counsel waived formal arraignment on said charge and pleaded [fol. 14] not guilty.

On motion of the Assistant District Attorney, this case was assigned for trial June 2, 1960.

Clerk's Certificate to Foregoing Papers (omitted in printing).

[fol. 15]

[File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
DIVISION "A"

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR WRITS  
—Filed April 29, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come John Burrell Garner and Vernon Johnnie Jordan, defendants in the above entitled and numbered cause, respectfully notify and inform this Honorable Court that defendants will apply to the Supreme Court of the State of Louisiana in the above numbered and entitled case for Writs of Certiorari, Mandamus and Prohibition, and such other Writs as may be necessary to have the judgment of Your Honor which denied, rejected and/or overruled the defendants' "Motion to Quash" reversed, set aside and/or declared null and void.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and  
A. P. Tureaud, By: Johnnie A. Jones.



[fol. 16]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—May 6, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that in this Honorable Court on Wednesday, April 27, 1960, the Application for Bill of Particulars was argued and submitted and the Court for oral reasons assigned, rendered Judgment denying the Application for Bill of Particulars in this case, to which ruling of the Court Counsel for the Defendants, John Burrell Garner and Vernon Johnnie Jordan, did then and there except and reserve a formal Bill of Exceptions thereto, asking that the Application filed in this case for Bill of Particulars on behalf of the said defendants, and the ruling of the Court be made a part of the record.

—2—

Be It Further Remembered, that on Friday, April 29, 1960, the defendants' Motion to Quash was argued and submitted, and the Court, for oral reasons assigned, rendered Judgment denying the Motion to Quash to which ruling of the Court Counsel for the defendants, John Burrell Garner and Vernon Johnnie Jordan, did then and there except and reserve a formal Bill of Exceptions, and ask that the Court's ruling be made a part of the record; that the Bill of Information be made a part of the record and that defendants' Motion to Quash be made a part of the record.

The defendants, John Burrell Garner and Vernon Johnnie Jordan, through their Attorneys of Record, having submitted this their Bills of Exceptions to the District Attorney now tenders the same to the Court and pray [fol. 17] that the same be signed and sealed by the Judge of the Honorable Court pursuant to the Statute in such case made and provided, which is done accordingly this 6th day of May, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court  
of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureaud, By: Johnnie A. Jones.

[fol. 18]

IN THE SUPREME COURT OF LOUISIANA

Number 45214

STATE OF LOUISIANA, Appellee,

versus

JOHN B. GARNER, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND  
PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER  
THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF  
EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding.

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of  
John Burrell Garner and Vernon Johnnie Jordan applying  
for Writs of Certiorari, Mandamus and Prohibition, with  
respect represents:

-1-

That, by the Honorable District Attorney of the Nineteenth Judicial District Court of the State of Louisiana, Parish of East Baton Rouge, your relators, all Negro college students are charged with the crime of "DISTURBING THE PEACE" under the provisions of LSA-R. S. 14:103 (7) of 1950, as amended, in that, allegedly on the 29th day of March, 1960, your relators refused to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Sitman's Drug Store; said conduct, allegedly, being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

-2-

That your relators, each, alleged and averred that they [fol. 19] are members of the Negro race and were on the 29th day of March, 1960, college students, matriculated at Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your relators, each, in protest of the segregation laws of the State of Louisiana did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your relators, each, were arrested, charged criminally with "DISTURBING THE PEACE," jailed and place under a Fifteen Hundred (\$1500) Dollar bond, each.

-3-

That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That the refusal of your relators to move from a cafe counter seat at Sitman's Drug Store in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meanings of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—5—

That the Bill of Information under which your relators are charged is insufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, in that said Bill of Information fails to particularize and specify a crime set forth and specifically enumerated in said Statute; that LSA-R. S. 14:103(7) of 1950, as amended, does not specify, enumerate nor embrace the crime of which your relators are charged.

—6—

That, thus, the relief which your relators seek herein [fol. 20] under the Application For Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—7—

That the Honorable Nineteenth Judicial District Court was in error in denying your relators the Application for Bill of Particulars and refusing the Motion to Quash;

that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of this proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after a trial on the merits of this cause is had; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, certified copies of which being hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

—8—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge, of relators' intention to apply to this Honorable Court for the Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and the rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number 35,568, State of Louisiana, Appellee versus John B. Garner, et al., Relators, and that the said decree or judgment of the Nineteenth Judicial District Court of [fol. 21] Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P.

Tureaud, By: Johnnie A. Jones.

[fol. 22]

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

**AFFIDAVIT**

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 6th day of May, 1960.

Murphy W. Bell, Notary Public.

[fol. 23]

**BRIEF**

May It Please The Court:

The Opinions of the District Court

This case, on Wednesday, April 27, 1960 and on Friday, April 29, 1960, respectively, was before the Honorable Court on "Application for Bill of Particulars" and "Motion to Quash," certified copies of which are hereto attached, annexed, incorporated and made a part hereof the same as



if written herein "in extenso," together with an extract of the Minutes of the Court of said dates; that for oral reasons assigned, the Court rendered Judgment denying the "Application for Bill of Partiers" and the "Motion to Quash."

### Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

[fol. 24]

### Syllabus

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of

such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A State cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

The defendants, John Burrell Garner and Vernon Johnnie Jordan (hereinafter called "Relators"), are Negro college students charged with the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the "Bill of Information" charges the re- [fol. 25] lators with having committed a crime by refusing to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, on the 29th day of March, 1960, after having been ordered to do so by the agent of the said Sitman's Drug Store, relators' conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera.

Your relators in Article Seven of their "Motion to Quash" alleged the following, to-wit:

"That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated in Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with DISTURBING THE PEACE, jailed and placed under a Fifteen Hundred (\$1500.00) Dollars bond, each."

Relators in Article Six of their "Motion to Quash" alleged and averred the following, to-wit:

"That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

#### Specification of Errors

1. That the Honorable Trial Court erred in refusing and/or denying relators' "Application For Bill of Particulars," the answers thereto being necessary to apprise your relators of the nature of the crime, if any, they had committed, the relators' act of commission being not a crime specified or enumerated in the statute under which relators are being prosecuted.
2. That the Honorable Trial Court erred in refusing, denying and/or overruling relators' "Motion to Quash," the "Bill of Information" under which they are charged, said Bill of Information being, patently,

erroneous on its face, in that it did not allege or charge a crime enumerated and defined specifically by statute, particularly, LSA-R. S. 14:103(7) of 1950, as amended.

[fol. 26]

#### Issue

Whether or not the "Bill of Information" under which relators are charged is sufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, or whether or not the act which the Bill of Information charges is a crime embraced in the criminal processes of the State of Louisiana, and particularly in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said Statute unconstitutional in that it deprives persons, particularly relators, of rights, liberties, privileges and immunities guaranteed by the Constitution of both the State of Louisiana and the United States of America, and, thus, violates the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America?

#### Argument

It is vigorously contended that the statute under which relators are charged is too vague to denounce a crime, and that it certainly does not make the act of your relators a crime. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

It is submitted that this case is analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943) and *Marsh v. Alabama*, 326 U. S. 501 (1945-1946), in which cases the defendants therein refused to obey orders of persons in authoritative capacity. However, the respective Courts, in essence, held that the mere refusal to obey an

order of one in charge, within itself does not constitute a breach of the peace.

This Honorable Court's attention is called to the fact that the statute, under which relators are charged, discloses a number of acts or offenses, necessarily different and distinct, as embraced within its terms as constituting disturbances of the peace. However, the act of refusing to move after being ordered to do so by a proprietor or agent of a store is not enumerated among those acts or offenses as constituting a disturbance of the peace. Thus, it cannot be maintained consistently with the established jurisprudence that relators' act was calculated and construed to disturb the peace. "An act or conduct, however reprehensible [fol. 27] is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and likewise, *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960); *State v. Verdin*, 192 La. 275, 187 So 666 (1939).

#### Conclusion

Thus, it is respectfully submitted that the "Bill of Information" under which your relators are charged is insufficient to charge or allege a crime, and is invalid on its face; that the act of relators, "refusing to move from a cafe counter seat after being ordered to do so by an agent thereof," is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or Judgments of the Honorable District Court be reversed and that the "Bill of Information" as to them, each, and as far as they are concerned be declared null and void, and that your relators, John Burrell Garner and Vernon Johnnie Jordan, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 28]

**REMEDIAL WRIT**

**IN THE SUPREME COURT OF THE STATE OF LOUISIANA**

**No. 45214**

---

**STATE OF LOUISIANA**

**versus**

**JOHN B. GARNER et al.**

---

**OPINION AND JUDGMENT—Filed May 9, 1960**

**In Re John Burrell Garner et al.**

Applying for writs of certiorari, mandamus and prohibition.

Johnnie A. Jones, A. P. Tureaud, Attorneys for Relator.

J. St. Clair Favrot, District Attorney, Attorneys for Respondents.

Writs denied. Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.

**FWH, JBH, EHMcC, JDG, WBH, RAV, LPG.**



[fol. 29]

## IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

## APPLICATION FOR REHEARING

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of John Burrell Garner and Vernon Johnnie Jordan, defendants-relators, respectfully represents:

That the opinion and decree rendered in this cause and by this Honorable Supreme Court on Thursday, May 12, 1960, is erroneous and contrary to the law, that a rehearing should be granted in this case, for the following reasons, to-wit:

—1—

That this Honorable Court in its opinion rendered on Thursday, May 12, 1960, failed to take into consideration that relators alleged, inter alia, in paragraph seven (7) of their original petition for Application for Writs of Certiorari, Mandamus and Prohibition the following, to-wit:

“ . . . ; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, . . . ”

[fol. 30] Wherefore, the premises considered, defendants-relators respectfully pray:

That after due consideration, a rehearing be granted in this case, and that finally there be judgment rendered herein as prayed for by your relators in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and for general and equitable relief in the premises.

Attorneys for Defendants-Relators, Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 31]

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING  
May It Please The Court:

Argument

Point 1

This Honorable Supreme Court pointed out in its written opinion rendered herein on Thursday, May 12, 1960, that:

“Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.”

This Honorable Court's attention is called to the fact that the relators are attacking the constitutionality of LSA-R. S. 14:103 (7) of 1950, as amended, Disturbing the Peace . . . “Commission of any other act in such a manner as to unreasonably disturb or alarm the public.”

Thus, the only legal issue before this Honorable Court is:

Whether or not the act of conduct of which your relators are charged is a crime denounced and defined by said statute, or whether or not said act of conduct of which your relators are charged is a crime embraced within the criminal processes of the State of Louisiana, and particularly within the meaning of said statute?

[fol. 32] It is submitted that the instant case is parallel and analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So. (2d) 778 (1943), and *State v. Christine*, 118 So. (2d) 403 (Advanced Sheets, April 7, 1960), in which cases, respectively, this Honorable Court heed:

“An act of conduct, however reprehensible is not a “crime” in Louisiana unless it is defined and made a crime clearly and unmistakably by statute.”

“Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the

Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute."

Thus, it is respectfully submitted that a rehearing should be granted herein and that your relators should be granted the relief as prayed for by them in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and that, the Bill of Information as to your relators, each, and as far as they are concerned, the Bill of Information under which relators are charged be declared null and void, and that your relators, John Burrell Garner and Vernon Johnnie Jordan, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 33] Certificate of service (omitted in printing).

Endorsement on petition for rehearing reading "Application not considered— See Rule XII.

Sec. 5 Rules of this Court. May 24, 1960.

FWH, JBH, EHMCC, JDG, RAV, LPG."

[fol. 34] Praecipe (omitted in printing).

[fol. 36]

[File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge  
Presiding

Number 35,568

---

STATE OF LOUISIANA

VS.

JOHN BURRELL GARNER and VERNON JOHNNIE JORDON

---

**Transcript of Hearing—June 2, 1900**

**APPEARANCES:**

Ralph Roy, Assistant District Attorney, for the State of Louisiana

Johnnie Jones and A. P. Tureau, Attorneys for the Accused

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[fol. 38] (Sequestration of witnesses ordered).

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Mr. RIGGS P. WILLIS, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Counsel Roy:

Q. State your full name please?

A. Riggs P. Willis.

Counsel Roy: We would like to reserve all our rights under previous motions and writs filed.

The Court: All right.

Q. Where are you employed Mr. Willis?

A. I own Sitman's Drug Store downtown, Third and Main, and the coffee shop attached to it.

Q. Did you own that particular business, that is, Sitman's Drug Store, at 301 Main Street on the 29th of March of this year?

A. Yes, I did.

Q. Did you have occasion to have these two colored men here come into your place of business that day?

A. Yes.

Q. What did they do?

A. That day?

Q. Yes. What did they do?

A. They simply seated themselves at the lunch counter.

Q. Any particular lunch counter?

A. We have a four-bay arrangement and they sat at the second bay.

Q. Go ahead.

A. They occupied two seats and their presence there caused me to approach them a short time later and advise them that we couldn't serve them, and I believe after that the police came and arrested them and took them away.

[fol. 39] Q. Now, when you advised them you couldn't serve them did they get up and leave or,—

A. No, one asked for coffee,—said they just wanted coffee.

Q. That was after you told them you couldn't serve them?

A. That was the conversation they had with me. I told them we couldn't serve them and one of the boys said he wanted some coffee.

Q. He said that after you told them you couldn't serve them?

A. That's right.

Q. And did he get up and leave or did he stay there?

A. No, he remained seated.

Q. Until the officers got there?

A. That's right.

Q. About how long after was that?

A. I would think less than ten minutes.

Q. Did you call the officers?

A. No, I didn't call the officers.

Q. Did any of your employees?

A. Not as far as I know.

Q. Do you know who called the officers?

A. I'm not at all sure. I know an officer was in the store at the time.

Q. Do you have any places there to serve colored people?

A. No, we have a coffee shop and restaurant adjoining our drug store and we have facilities for only the one race.

#### Cross examination.

By Counsel Jones:

Q. You say you have facilities only for one race. What was that, the human race?

A. The white race.

Q. The white race?

[fol. 40] A. That's right.

Q. You don't have any facilities for members of the negro race at all?

A. We have negro employees of the colored race, very fine employees. They eat in our place; they eat in the kitchen.

Q. But customers of your store,—do you have any facilities for the negro race?

A. In our drug store or coffee shop?

Q. I'm talking about any facilities, any place for your customers who come in there to make purchases?

A. I own a restaurant attached to and adjoining my drug store, and we serve only white people in that restaurant.

Q. Do you have a cafe for members of the negro race?

A. No.

Q. This cafe counter seat at which these defendants sat, was that in the drug store?

A. It is in my restaurant and coffee shop.

Q. Is that a part of the drug store?

A. It's owned by me. It is operated under a separate license.

Q. It is all housed in one room or one building?

A. There are two buildings. They adjoin. There are openings between the two.

Q. There is an opening between the two buildings?

A. That's right.

Q. And you come into the drug store part and go on into the cafe, is that right sir?

A. That's right.

Q. Do you refuse to serve members of the negro race in the drug store section?

A. No.

Q. You do serve them?

[fol. 41] A. Absolutely.

Q. Do you require members of the negro race in your drug store to buy at one counter and the whites to buy at another?

A. Oh no.

Q. They can both buy at the same counter?

A. Yes.

Q. No objection to that?

A. No.

Q. Do you put all their money in the same cash registers?

A. Yes.

Q. You make no distinction between their money?

A. No, none at all. I can say negroes are very good customers.

Q. For what reason did you refuse to serve these defendants?

A. As a matter of policy I have never invited colored trade, negro trade in the restaurant, as a matter of policy. I don't have the facilities. I have facilities for only one race, the white race.

By the Court:

Q. Is your business owned by a corporation or by you individually?

A. It is solely owned.

Q. By you?

A. Yes.

Q. And your store is located where?



A. At the corner of Third and Main, 301 Main Street.

Q. The restaurant is in a building adjoining?

A. In an adjoining building facing on Main Street.

Q. That's in the City of Baton Rouge?

A. Yes.

Q. Parish of East Baton Rouge?

A. Yes.

Q. Are you able personally to identify these two accused [fol. 42] who were in your place of business on that date?

A. Yes.

By Counsel Tureau:

Q. Mr. Willis, was anyone else in the store at the time?

A. Yes, there were a number of customers seated at the counter and a number of customers in the drug store too.

Q. These counters were divided up into cubicles or bays you called them?

A. There's an arrangement of counters, four rectangular counters, with stools at about two foot intervals all around it.

Q. In what you call a bay?

A. Yes.

Q. And in this second bay where these defendants sat were there other customers there at the same time?

A. I'm sure there were. I couldn't testify how many, but I'm sure there were other customers at the noon hour.

Q. Was there any complaint from the customers?

A. Not directly to me. I was in the other part of the store.

Witness excused.

CAPTAIN ROBERT WEINER, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Counsel Roy:

Q. What is your full name?

A. Robert Weiner.

Q. What do you do?

A. I am a Captain with the Police Department.

Q. Captain, did you have occasion on the 29th of March, 1960, to go to Sitman's Drug Store on Main Street, 301 [fol. 43] Main Street in this City, and participate in the arrest of these two accused seated here?

A. I did.

Q. Do you recognize them?

A. Yes.

Q. Tell the Court exactly what was done?

A. Well, I received a call at police headquarters from the officer on the beat, Officer Larsen. He told me that there were two negroes sitting at the lunch counter at Sitman's Drug Store. I told him to just stand by until we arrived at the scene. Major Bauer approached them and told them that they were violating the law by sitting there and asked them to leave. One of them mentioned something about an umbrella that he had bought and he couldn't see why he couldn't sit at the lunch counter. He told them again that they were violating the law and when they didn't make any effort to leave we placed them under arrest and brought them to police headquarters.

Q. Did you see Mr. Willis over there?

A. No, I didn't see Mr. Willis. I'm assuming Mr. Willis is the manager, but we didn't talk to anyone in the place other than the two defendants.

Cross examination.

By Counsel Tureau:

Q. Your arrest was made solely on the call which you received from the police officer on that detail?

A. That's right.

Q. There was no complaint by anybody that these defendants were violating the law?

A. I don't know who made the complaint as far as the police officer was concerned.

Q. But you know of no complaint from anybody else other [fol. 44] than the police?

A. No, that's the only one that I know of.

Q. And when you arrived on the scene you saw these defendants sitting at this lunch counter?

A. That's right.

Q. And based upon what you call a violation of the law you arrested them, is that correct?

A. That's right.

Q. What law is this you are referring to that you advised them they were violating?

A. Act 103, which is disturbing the peace charge.

Q. You advised them that you were arresting them under the provisions of Act 103?

A. We told them that they were violating the law under the State Act and that we requested that they leave. When they refused to leave we placed them under arrest.

Q. That's all that transpired at that time?

A. Other than the fact that one of them said something about an umbrella that he had bought there.

Q. He told you he had bought an umbrella there?

A. That's right.

Q. Is it a fact that they were negroes that you arrested them?

A. The fact that they were violating the law.

Q. In what way were they violating the law?

A. By the fact that they were sitting at a counter that was reserved for white people.

Q. So the fact was, that they were negroes that was the cause of you arresting them?

A. Well, the only thing that I can say is, the law says that this place was reserved for white people and only white people can sit there and that was the reason they were arrested.

[fol. 45] Q. Do you know of any such law as that?

A. They have a law here I believe that covers such a situation.

Q. You believe. Do you know positively that there is such a law?

A. The fact that they were sitting there and in my opinion were disturbing the peace by their mere presence of being there I think was a violation of Act 103.

Q. You are saying that their mere presence in a store that you believe is reserved by law for white people constitutes a disturbance of the peace?

A. I didn't say their presence in the store. I said their presence sitting at the lunch counter.

Q. Lunch counter? You admit that?

A. Yes.

By Counsel Jones:

Q. The mere presence of these negro defendants sitting at this cafe counter seat reserved for white folks was violating the law, is that what you are saying?

A. That's right, yes.

Redirect examination.

By Counsel Roy:

Q. Captain, you are not a lawyer and you don't purport to be a student of the law. You are not a lawyer, are you?

A. No.

Q. You don't feel qualified to give interpretations on legal propositions and law, do you?

A. No.

By the Court:

Q. Can you identify these two accused as the two that you arrested on that occasion?

A. Yes, sir.

Q. Were they seated at the counter or in this bay at the [fol. 46] time you and the other officer entered the store?

A. Yes, sir.

Q. They were in the restaurant?

A. Yes, sir.

Q. Did you request that they leave before you placed them under arrest?

A. Yes, sir.

Q. Did they leave?

A. Not voluntarily.

Q. Not the first time?

A. No, sir, they never left at all.

Q. In other words, you did not place them under arrest until after you had given them an opportunity to leave?

A. That's right.

Q. And they did not leave after you had requested that they leave?

A. No, sir.

Q. It was then that you placed them under arrest?

A. That's right.

Witness Excused

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### FINDING OF GUILT

The Court: Let the defendants stand up.

(Defendants stood).

The Court: In this case, the evidence was not disputed, the evidence put on by the State, that these two accused were in this place of business on the date alleged in the bill of information, and they were seated at the lunch counter in a bay where food was served and they were not served while there, and officers were called and after the officers [fol. 47] arrived they informed these two accused that they would have to leave, and they refused to leave. Whereupon, the officers placed them under arrest for violating the law, specifically Title 14, Section 103, subsection 7. The Court is convinced beyond a reasonable doubt of the guilt of the accused from the evidence produced by the State, for the reason that in the opinion of the Court, the action and conduct of these two defendants on this occasion at that time and place was an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public. I find them both guilty as charged. Do you request that I defer sentence and do you want me to sentence them now?

Counsel Tureau: We request that sentence be deferred and reserve a bill and ask that your Honor's ruling be made a part of the bill of exception.

Counsel Jones: We also inform the Court here and now that we intend to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and [fol. 48] prohibition.

The Court: Answer my question now. Is it your request that I defer sentence?

Counsel Tureau: Yes, sir, we do ask that sentence be deferred.

The Court: In accordance with counsel's request, the Court defers sentence in this matter. Meanwhile, the accused are to remain on their present bond, and sentence will be deferred until Tuesday, July 5, 1960, at which time they are to report back for sentence.

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[fol. 49]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

DIVISION "A"

MINUTES OF COURT—Thursday, June 2, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,568—Criminal Docket

---

STATE OF LOUISIANA

VS.

JOHN BURRELL GARNER, VERNON JOHNNIE JORDON

---

This case came on for trial in accordance with previous assignment, the accused, charged with disturbing the peace, being present in court represented by counsel.

On motion of counsel for the accused, the Court ordered a sequestration of witnesses in this case.

MINUTE ENTRY OF FINDING OF GUILT

Evidence was introduced and the case submitted. Whereupon, the Court, for oral reasons assigned, found each of the accused guilty as charged, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception. Counsel for the accused gave notice to the

Court and opposing counsel of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition.

Sentence deferred until July 5, 1960.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 50]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION FOR A NEW TRIAL—Filed July 5, 1960

And now come the said John Burrell Garner and Vernon Johnnie Jordan (hereinafter referred to as "Defendants"), through their undersigned counselor, and move the Court that the verdict of this Honorable Court rendered herein on Thursday, June 2, 1960, be set aside and a new trial ordered, for the following reasons, to-wit:

—1—

That said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly established that the defendants, neither of them were ever ordered to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, by an agent thereof as alleged in the Bill of Information under which the said defendants are charged. The owner of the said Drug Store, Mr. Riggs P. Willis, testified that the defendants occupied two seats and their presence there caused him to approach them and advise them that they couldn't serve them; that he had no facilities to serve colored people; that he only has facilities for the one race, the White race. The evidence establishes that the defendants were arrested and so charged because they are members of the Negro race and were at the time of their arrest



sitting at the cafe counter that was reserved for white people by the owner thereof.

—2—

[fol. 51] That it is clearly shown by the evidence adduced on the trial of said cause that the said verdict is contrary to the law and the evidence since the said Bill of Information alleges that the defendants refused to move from a cafe counter seat at the said Sitman's Drug Store after having been ordered to do so by the agent of the said Sitman's Drug Store as distinguished from being advised that they, defendants, would not be served for the reasons that said cafe counter was reserved for members of the White race only and that the owner did not provide facilities for members of the Negro race.

—3—

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States, and repugnant to and in violation of Title 42, United States Code, Sections 1981 and 1983, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitutions of the State of Louisiana and of the United States of America, respectively.

Wherefore, your movers pray that, after due proceedings had, the verdict of the Honorable Court be set aside and a new trial ordered herein.

John Burrell Garner, Vernon Johnnie Jordan.  
Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureaud, By: Johnnie A. Jones.

[fol. 52] [File endorsement omitted]

*Duly sworn to by John Burrell Garner and Vernon Johnnie Jordan, jurat omitted in printing.*

[fol. 53]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Tuesday, July 5, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,568—Criminal Docket

---

STATE OF LOUISIANA

VS.

JOHN BURRELL GARNER, VERNON JOHNNIE JORDON

---

MINUTE ENTRY OVERRULING MOTION FOR NEW TRIAL

The accused, having previously been tried and found guilty of disturbing the peace, were present in court represented by counsel. The accused, through counsel, filed a motion for a new trial. The motion was argued and submitted, and the Court, for oral reasons assigned, overruled the motion for a new trial, to which ruling of the Court counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused stated to the court that he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exception previously taken.

MINUTE ENTRY OF SENTENCE

The accused were brought before the bar for sentence. Whereupon, the Court sentenced each of the accused, John Burrell Garner and Vernon Johnnie Jordon, to pay a fine of \$100.00 and costs, or in default of payment thereof to be confined in the parish jail for ninety days, and in addition thereto be confined in the parish jail for thirty days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of

the fine and costs, to which sentence counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused requested that the accused be released on their present bonds and gave notice to the Court and opposing counsel of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel for the accused until July 20, 1960 at 10 o'clock A.M. for the purpose of applying to the Supreme Court for writs, and ordered the [fol. 54] accused released on their present bonds pending the application for said writs.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 55]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—July 15, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that on Thursday, June 2, 1960, this case came on for trial in accordance with previous assignment, the defendants, John Burrell Garner and Vernon Johnnie Jordan, being present in Court represented by Counsel. Evidence was introduced and the case was submitted. Whereupon, the Court, for oral reasons assigned, found each of the defendants guilty of disturbing the peace, as charged, to which ruling or verdict of the Court Counsel for the defendants did then and there object and reserve a formal Bill of Exception thereto and gave notice to the

Court and opposing Counsel of their intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

—2—

Be It Further Remembered, that the defendants, John Burrell Garner and Vernon Johnnie Jordan, having previously been tried and found guilty of disturbing the peace, were on the 5th day of July, 1960, present in Court represented by Counsel; that the defendants, through Counsel, filed a "Motion For a New Trial," which motion was argued and submitted, and the Court, for oral reasons assigned, overruled the Motion for a New Trial, to which ruling of the Court Counsel for the defendants did then and there [fol. 56] except and reserve a formal Bill of Exception and requested that all reservations, motions, notices and Bills of Exceptions previously filed, taken and/or given be renewed.

—3—

Be It Further Remembered, that on Tuesday, July 5, 1960, the defendants, John Burrell Garner and Vernon Johnnie Jordan, were brought before the Bar for sentence. Whereupon, the Court sentenced each of the said defendants to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish jail for Ninety (90) days, and in addition thereto be confined in the Parish jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence Counsel for the said defendants did then and there except and reserve a formal Bill of Exception, and requested that the defendants be released on their present bonds and gave notice to the Court and opposing Counsel of his intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

The defendants, John Burrell Garner and Vernon Johnnie Jordan, through their Attorneys of Record, having submitted this their Bill of Exceptions to the District Attorney, now tenders the same to the Court and pray that

the same be signed and sealed by the Judge of the Honorable Court pursuant to the statute in such case made and provided, which is done accordingly this 15th day of July, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 57]

IN THE SUPREME COURT OF LOUISIANA

Number 45338

STATE OF LOUISIANA, Appellee

VERSUS

JOHN B. GARNER, et al., Defendants-Appellants

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE FRED S. LEBLANC, JUDGE, PRESIDING

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of John Burrell Garner and Vernon Johnnie Jordan (hereinafter referred to as "Relators") applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That relators show that this cause was previously before this Honorable Supreme Court on an "Application For

Writs of Certiorari, Mandamus and Prohibition," under Case Number 45,214, State of Louisiana, Appellee, versus John B. Garner, et al., Defendants-Appellants; that relators do hereby plead the filings and pleadings of said cause Number 45,214, State of Louisiana, Appellee, versus John B. Garner, et al., Defendants-Appellants, and make same a part hereof by reference thereto, the same as if written herein "in extenso".

—2—

That the Honorable Court aquo erred in overruling relators' Motion For a New Trial; that the evidence adduced on the trial of this cause clearly established that the relators herein, neither of them, were ever ordered to move [fol. 58] from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, by an agent thereof as so alleged in the Bill of Information under which your relators herein are charged; that the owner, Mr. Riggs P. Willis, of the said Drug Store testified that your relators herein occupied two (2) seats and their presence there caused him to approach them and advise them that they could not serve them (Tr. 2 and 3) as counter-distinguished from being ordered to move from said cafe counter seats as so alleged in the Bill of Information under which your relators are charged; that the evidence clearly established that your relators were arrested and so charged, criminally, because they were members of the Negro Race and were at the time of their arrest occupying seats at said cafe counter which were, by owner, reserved for white people only (Tr. 3 and 8).

—3—

That the verdict and sentence of the Honorable Court aquo are in error in that same are contrary to the law and evidence and repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally



guaranteed all citizens of the State of Louisiana and of the United States.

—4—

Relators show that a true original duplicate copy of their "Motion For a New Trial" is hereto attached, annexed, incorporated and made a part hereof the same is if written herein "in extenso"; that relators allege and aver that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after the trial on the merits have been had.

—5—

That relators have given notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge of relators' intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and rules of this Honorable Court.

[fol. 59] Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its Docket, Number 35,568, State of Louisiana versus John B. Garner, et al., and that the said decrees or judgments of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.



[fol. 60]  
State of Louisiana  
Parish of East Baton Rouge

**AFFIDAVIT**

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones.

Sworn to and Subscribed before me this 19th day of July, 1960.

Murphy W. Bell, Notary Public.

[fol. 62]

**BRIEF**

May It Please the Court:

**The Opinions of the District Court**

This case, on Thursday, June 2, 1960, was before the Honorable Court aquo on its merits. Evidence was introduced and the case submitted. Whereupon, the Court for

oral reasons assigned, found your relators, John Burrell Garner and Vernon Johnnie Jordan, guilty of disturbing the peace, as charged, all in accordance with the Minutes of the Honorable Court aquo, dated Thursday, June 2, 1960, a True and Correcct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that on Tuesday, July 5, 1960, your relators having previously been tried and found guilty of disturbing the peace, filed a Motion For a New Trial. The Motion was argued and submitted, and the Honorable Court aquo, for oral reasons assigned, overruled the Motion For a New Trial, and sentenced each of your relators to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for Ninety (90) days, and in addition thereto to be confined in the Parish Jail for Thirty (30) days, the latter part of this [fol. 63] sentence in the event of non-payment of the fine and costs, all in accordance with the Minutes of the Honorable Court aquo of Tuesday, July 5, 1960, a True and Correcct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

### Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

### Syllabus

"The likelihood, however great, that substantive evil result cannot alone justify a restriction upon freedom of speech or press, but the evil itself must be substantial and serious and even the expression of legislative preferences or beliefs cannot transform minor

matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant curtailment of liberty of expression." *Graham v. Jones*, 200 La. 137, 7 So (2d) 688 (1942).

"The constitutional guarantee of due process of law does not mean a procedure that endangers the innocent, but it means procedure that preserves those enduring principles enunciated in the Bill of Rights and the preservation of those basic rights termed inalienable in the Declaration of Independence." *State v. Straughan*, 229 La. 1036, 87 So (2d) 528 (1956).

"The right of personal liberty is one of fundamental rights guaranteed to every citizen, and any unlawful interference therewith may be resisted." *City of Monroe v. Ducas*, 203 La. 974, 14 So (2d) 781 (1943).

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced [fol. 64] as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and

discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuance and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment." *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

Your relators, John Burrell Garner and Vernon Johnnie Jordan, are both Negro college students, having been charged with, tried and sentenced for the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the Bill of Information charges the relators with having committed a crime on the 29th day of March, 1960, by refusing to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, after having been ordered to do so by an agent thereof. However, the evidence adduced on the trial of this cause established that the owner of the said Store advised your relators that they could not be served because they were members of the Negro Race, and that said Store only [fol. 65] provide facilities to serve members of the White

Race (Tr. 2, 3 and 8) as counter-distinguished from being ordered to move from a cafe counter seat as so alleged in the Bill of Information under which relators are charged.

### • Specification of Errors

1. That the Honorable Trial Court erred in finding your relators guilty as charged. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence, in that, relators were never ordered to move as so alleged in the Bill of Information, but that, relators were advised by the owner of said Store that they could not be served for lack of facilities provided for members of the Negro Race.
2. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence; that it denies and deprives your relators of their rights, privileges, immunities and liberties, due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States.
3. That for reasons aforesaid, the Honorable Trial Court erred in overruling your relators' Motion For a New Trial.
4. That for reasons aforesaid, the sentence of the Honorable Trial Court is in error and contrary to the law and the evidence.

### Issue

Whether or not the mere act of conduct of your relators, Negro college students, sitting in seats at a cafe counter reserved, by custom, for White people constitute a crime within meaning and contemplation of or whether or not the said act of conduct of your relators is a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said statute unconstitutional, depriving your relators of their rights, privileges, liberties and immunities and denying them due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States?

### Argument

The evidence adduced on the trial of this cause, without equivocation, established that your relators were merely advised by the owner of the said Store that they could not be served for lack of facilities provided for members of the Negro Race (Tr. 2, 3 and 8) as counter-distinguished from being ordered to move as so alleged in the Bill of Information. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that [fol. 66] person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

Herewith, relators file an original duplicate copy of the "Transcript of Testimony" of the evidence adduced and taken on the trial of the merits of this cause on Thursday, June 2, 1960, and make same a part hereof as if written herein "in extenso."

### Conclusion

Thus, it is respectfully submitted that the Bill of Information under which your relators are charged is insufficient to allege a crime based on the evidence adduced on the trial of this cause, and that the act of conduct of your relators is not a crime embraced within the meaning and contemplation of LSA-R. S. 14:103 (7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or judgments of the Honorable Trial Court be reversed and that the verdict and sentence as to them, each, and as far as they are concerned be declared null and void and that your relators, John Burrell Garner and Vernon Johnnie Jordan, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud,  
By: Johnnie A. Jones.

Certificate of service (omitted in printing).



[fol. 67]

IN THE SUPREME COURT OF LOUISIANA  
New Orleans

By Hawthorne, J.:

No. 45,338

STATE OF LOUISIANA

v.

JOHN B. GARNER, et al.

OPINION AND JUDGMENT—October 5, 1960

In re: John Burrell Garner and Vernon Johnnie Jordan  
applying for writs of certiorari, mandamus and prohibition.

Writs refused.

This court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The ruling of the district judge on matters of law are not erroneous. See *Town of Pontchatoula vs. Bates*, 173 La. 824, 138 So., 851.

FWH, JBH, EHMCC, WBH, RAV, LPG, HFT.

[fol. 68]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR STAY OF EXECUTION AND ORDER  
GRANTING SAME—October 7, 1960

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of John Burrell Garner and Vernon Johnnie Jordan, defendants in the above numbered and entitled cause, with respect represents:



—1—

That the decree of this Honorable Court, rendered October 5, 1960, refusing their Application For Writs of Certiorari, Mandamus and Prohibition and, thus, affirming the verdict and sentence of the Nineteenth Judicial District Court of Louisiana, Division "A", is final, there being no right of rehearing therefrom.

—2—

Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving them of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.

—3—

Petitioners aver that the opinion and decree of this [fol. 69] Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of the State of Louisiana and by the 14th Amendment of the Federal Constitution and that they were tried and convicted, over their protest, without due process of law, to-wit:

That the act of conduct of which the defendants are charged is not a crime denounced and defined by LSA-R.S. 14:103 (7) of 1950, as amended, nor is it a crime embraced within the meaning and contemplation of said Statute or within the criminal processes of the State of Louisiana, unless, or otherwise, in violation of the said Constitutional provisions, respectively.

—4—

Petitioners aver that they timely raised the said questions in the lower Court at the time of their arraignment and after their conviction in a motion for a new trial and in this Honorable Court by their Assignment of Errors.

-5-

Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of this Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay or delay in which to apply to said Court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted a delay of 90 days [fol. 70] in which to prepare and file in the Supreme Court of the United States their Application for a writ of Certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this Honorable Court be withheld accordingly.

And for all general and equitable relief.

Attorneys for Petitioners: Johnnie A. Jones, A. P. Tureaud.

*Duly sworn to by Johnnie A. Jones and A. P. Tureaud,  
jurats omitted in printing.*

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### Order

Let petitioners be granted a stay of execution of the decree of this Honorable Court for a period of 60 days.

Jno. B. Fournet, Chief Justice.

— New Orleans, Louisiana, October 7th, 1960.

[fol. 70a] Praeipe (omitted in printing).

[fol. 71] Clerk's Certificate to foregoing transcript  
(omitted in printing).

[fol. 73]

**SUPREME COURT OF THE UNITED STATES**

**No. 617, October Term, 1960**

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**JOHN BURRELL GARNER, et al., Petitioners,**

**VS.**

**LOUISIANA.**

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**ORDER ALLOWING CERTIORARI—March 20, 1961**

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with Nos. 618 and 619 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.